IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

WP(C).No. 29940 of 2006(L)

PETITIONERS:

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1. P.G. THOMAS, S/O. GEORGE,
   PUTHUVEETTIL HOUSE, MOOLEPPADAM, KALAMASSERY P.O.,
   ERNAKULAM DISTRICT.

2. SABU JOSEPH, S/O.V.M.JOSEPH,
   VATTOMTHOTTIYIL, MOOLEPPADAM, KALAMASSERY P.O.,
   ERNAKULAM DISTRICT.

3. M.C. UTHUP,
   MUNDACKAL HOUSE, MOOLEPPADAM, KALAMASSERY P.O.,
   ERNAKULAM DISTRICT.

4. SEBASTIAN P.J.,
   PUTHENPURACKAL, MOOLEPPADAM, KALAMASSERY P.O.,
   ERNAKULAM DISTRICT.

BY ADV. SRI.C.T.RAVIKUMAR
SMT.K.S.SAIRA
SRI.A.ANILKUMAR

RESPONDENTS:

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1. STATE OF KERALA,
   REPRESENTED BY THE SECRETARY TO GOVERNMENT,
   DEPARTMENT OF LOCAL SELF GOVERNMENT, SECRETARIAT,
   THIRUVANANTHAPURAM.

2. KALAMASSERY MUNICIPALITY,
   REPRESENTED BY ITS SECRETARY, KALAMASSERY.

3. THE SECRETARY,
   KALAMASSERY MUNICIPALITY, KALAMASSERY.

4. JAMALUDHEEN,
KALLIDAM PURAYIDAM, MOOLEPPADAM ROAD,
KALAMASSERY, ERNAKULAM DISTRICT.

5. K.MOHAMMED ALI,
KALLIDAM PURAYIDAM, MOOLEPPADAM ROAD,
KALAMASSERY, ERNAKULAM DISTRICT.

R1 BY GOVT.PLEADER SMT.T.B.RAMANI.
R2 & R3 BY ADV.SRI.M.K.ABOOBACKER
R4 & R5 BY ADV. SRI.V.GIRI
SRI.RAJESH
ADV. SRI.LAL GEORGE (COMMISSIONER)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C) No.29940 OF 2006

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DATED THIS THE 13TH MARCH, 2007

J U D G M E N T

Four residents of Mooleppadam in Ward No.22 of the Kalamassery Municipality are aggrieved by the flat construction works which are being taken up by respondents 4 and 5 at Mooleppadam. According to the petitioners, the inhabitants of Mooleppadam locality are afflicted with what they describe as perennial diluvial problem. According to them, it was the cursory actions on the part of the authorities while constructing railway over bridge as part of NH 47 Four Line Project that put the locality liable to flood. The locality is surrounded by hilly areas on three sides and free flow of water through the thodu that runs in the east west direction in the area was intercepted while effecting the construction of the over bridge. Flooding at the Mooleppadam area made the residents to take up the matter with the Kerala Human Rights Commission. Even though the Kerala Human Rights Commission issued certain orders, no proper action for redressing the grievances of the people of the locality was taken and the petitioners allege that the diluvial problem continues. Ext.P1 is copy of the minutes of a meeting which was convened by the District Collector on 22.1.1999 for discussing the matter of prevention

of water stagnation at Mooleppadam. Ext.P2 is copy of the order dated 22.7.2002 passed by the Kerala Human Rights Commission. Exts.P3 and P4 are sketches showing the prevailing situation and the proposal which was mooted by the Chief Engineer, National Highways for construction of a culvert for avoiding flood at Mooleppadam. The petitioners complain in the Writ Petition that despite lapse of years, the assurances of the authorities remain as assurances only and the diluvial problem in the area has assumed perilous dimensions. Ext.P5 series of photographs have been produced to show that when there are heavy rains, the Mooleppadam road area becomes a water channel. The petitioners point out that the residents of the area have been carrying on with their agitation and endeavours so as to open the eyes of the authorities so that they will expedite action for providing a permanent solution for the diluvial problem. While so, the petitioners came to know about the intention of respondents 4 and 5 to construct flat upon their plot and immediately thereafter the petitioners submitted Ext.P6 representation before the 3rd respondent. Referring to Rule 23(3) of the Kerala Municipality Building Rules, the Writ Petition was filed originally for a direction to respondents 2 and 3 to consider and pass orders on Exts.P6 and P7 and for orders to cancel

the building permit which had been granted to respondents 4 and 5. The respondents in the Writ Petition are the State (1st respondent), the Kalamassery Municipality (2nd respondent), the Secretary of the Kalamassery Municipality (3rd respondent), Sri.Jamaludheen (4th respondent) and Sri.K.Mohammed Ali (5th respondent). Later, the petitioners sought amendment of the Writ Petition incorporating violation of various sub rules of Rule 24 and Rule 103 of the Kerala Municipality Building Rules and also Section 383A of the Kerala Municipality Act.

2. An Advocate Commissioner was deputed by this Court on an application submitted by the petitioners and he has submitted a report on 23.1.2007.

3. Detailed counter affidavit has been filed by respondents 4 and 5 through which they refute all the allegations regarding rule violations and the grounds raised by the petitioners. The Municipality also has filed a counter affidavit which supports the stand of respondent Nos.4 and 5.

4. Sri.C.T.Ravikumar, counsel for the petitioner and Sri.Rajesh, Advocate representing Sri.V.Giri, counsel for respondents 4 and 5 as well as Sri.M.K.Aboobacker, Standing Counsel for the Municipality

addressed very fervent submissions before me on the basis of the pleadings raised by their respective clients. The arguments mainly centered round the following questions:

1. Whether the road that lies on the eastern and southern sides of the property in question, viz., HMT Mooleppadam Road require notification by the 2nd respondent-Municipality so as to attract the restrictions on constructions enjoined under Rule 26 of the Kerala Municipality Building Rules and Section 383A of the Kerala Municipality Act, 1994 in the light of Section 207 of the said Statute?

2. Whether there is violation of sub-rules (3), (4) and (5) and the third proviso to sub-rule (11) of Rule 24 of the Kerala Municipality Building Rules?

3. Whether respondents 4 and 5 are entitled for the benefit of the proviso to sub-rule (3), (4) and (5) of Rule 24 of the Kerala Municipality Building Rules?

4. Whether there is violation of Rule 103 of the Kerala Municipality Building Rules?

5. Whether there is any violation of Rule 121 of the Kerala Municipality Building Rules?

5. The Advocate Commissioner was directed to report on the following aspects:

i. Whether the constructions being taken up by respondents 4 and 5 offend sub-rules (3), (4) and (5) of Rule 24 of the Kerala Municipality Building Rules;

ii. whether those constructions violate Section 383A of the Municipality Act;

iii. whether the constructions violate Rule 103 of the Kerala Municipality Building Rules;

iv. Whether the constructions violate Rule 23 of the Kerala Municipality Building Rules.

The Commissioner's conclusion on point No.(i) is that the constructions prima facie do not offend any of the provisions of sub-rules (3), (4) and (5) of Rule 24 of the Rules. As regards the second point also, the Commissioner's report is that there is no violation. But he has stated that on the south-west portion of the site, a shed with hollow bricks has been constructed abutting into the road on the southern side and no permission has been obtained from the Municipality in that regard. But the Commissioner has observed that the said construction is a temporary one only and the stand of respondents 4 and 5 is that it will

be demolished once the construction is over. Regarding the third aspect, i.e., whether the constructions violate Rule 103 of the Kerala Municipality Building Rules, the Commissioner has reported that a well with rings is erected on the south-west corner of the site and that the depth of the well is about three metres and water is available upto a depth of about 1.5 metres. The well is erected abutting the road on the southern side and there is no proper fencing also. The Commissioner has clearly reported that as far as children are concerned, it is dangerous to keep the well without fencing. He has also reported that no permission has been obtained from the Municipality for digging the well. On the question as to whether the constructions violate Rule 23 of the Rules, the Commissioner has reported that the area is a floodable area and that the grievance of the petitioners and the neighbours regarding flood and water logging in the area especially during monsoon is genuine.

6. Even though the submissions of Sri.C.T.Ravikumar, counsel for the petitioners urging that the constructions presently taken up are violative of rules were not totally unattractive, I do not think that this Court will be justified in the nature of the Commissioner's report and the stand taken by the Municipality in interdicting the

constructions. Several disputed facts have cropped up and I am of the view that all issues except the petitioner's allegation that the well has been constructed in violation of Rule 103 should be got resolved through a competent civil court. I relegate the parties to a civil court.

7. On 21.12.2006 it had been clarified that the constructions which are being taken up by respondents 4 and 5 will be at their risk. The petitioner's grievance is that ignoring the note of caution so struck by this Court, respondents 4 and 5 have been continuing with the construction in gay abandon. The clarification that the constructions will be at the risk of respondents 4 and 5 will continue.

8. The Writ Petition accordingly will stand disposed of with the following directions:-

1. The Municipality is directed to take appropriate action against respondents 4 and 5 for their violation of Rule 103 of the Kerala Municipality Building Rules in the context of the well constructed by them.

2. The petitioners are directed to approach a competent civil court within a period of two months of receiving copy of this judgment seeking appropriate reliefs.

3. The constructions which have been taken up by respondents

4 and 5 will be at their risk and subject to the decision to be taken by the civil court in the prospective suit.

(PIUS C. KURIAKOSE, JUDGE)

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